IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

A. O. NO. 362 OF 2002

M/S. RAVI DEVELOPMENTS &; ANR. ... Appellant
VS.
DNYANESHWAR S. PATIL &; ORS ... respondent

Mr. Pankaj J. Das i/b. R. S. Doctor for appellant
Mr. D.R. Raja i/b. C. R. Raja for respondent nos. 18 to 21.
Mr. K.S. Dewal for respondent nos. 1, 2, 4, 6 to 11 and respondent no.17.

CORAM: D. G. KARNIK **J.**
DATE: November 29, 2006

P.C.:

1. This appeal filed by the original plaintiff is directed against he order dated 3rd January 2002 passed by the Civil Judge, Senior Division, Thane dismissing his application for injunction.

2. Respondent nos. 1 to 16 are the orignal owners of the suit property. By an agreement of sale dated 30th April 1990 the respondent nos. 1 to 16 agreed to sell the suit property to the appellant no.1. By a supplementary agreement dated 23rd December 1991 the price of the property was reduced to Rs.6,64,650/-. However, in breach of the said agreement of sale the respondent nos. 1 to 16 sold the suit property to

respondent no.17 by a sale deed dated 10th February 1995. Thereafter the appellant filed the suit bearing Special Civil Suit no. 758 of 1990 for specific performance of the agreement of sale dated 30th April 1990. In the suit the appellant claimed that possession of the suit property was handed over to the appellant no.1 in pursuance of the agreement of sale and therefore the respondent be restrained by injunction from disturbing the possession. That application was rejected by the impugned order.

3. The agreement of sale dated 30th April 1990 does not disclose that the possession was ever handed over to the appellant no.1. Under Article 25 of the Bombay Stamp Act when possession of the property is agreed to be delivered prior to the date of the execution of the sale the agreement is required to be stamped as if it is a conveyance. The agreement dated 30th April 1990 is written on a stamp paper of Rs.10/- and is not stamped as a conveyance. This is another indication that the respondents 1 to 16 had not handed over possession to the appellant no.1 prior to the date of sale deed. The respondent nos. 1 to 16 have already sold the suit property to respondent no.17 by a sale deed dated 10th February 1995. The sale deed describes that the possession has been handed over to respondent no.17. As against this evidence there is no satisfactory evidence adduced by the appellant no.1 to show that he is in

possession of the suit property . The trial judge has recorded a finding of fact that the appellant no.1 is not in possession of the suit property . In my view the finding is a correct finding. That apart, the injunction was refused on 3rd January 2002. Though this appeal was filed in the year 2002 this court never granted injunction in favour of the appellant. For a period of 5 years there has been no injunction against the respondents and respondent no.17 continues to be in possession. In the circumstances there is no merit in the appeal which is hereby dismissed summarily.

(D.G. KARNIK J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil application no. 465 of 2002
in
A. O. NO. 362 OF 2002

M/S. RAVI DEVELOPMENTS &; ANR. ... Appellant
VS.
DNYANESHWAR S. PATIL &; ORS ... respondent

Mr. Pankaj J. Das i/b. R. S. Doctor for appellant
Mr. D.R. Raja i/b. C. R. Raja for respondent nos. 18 to 21.
Mr. K.S. Dewal for respondent nos. 1, 2, 4, 6 to 11 and respondent no.17.

CORAM: D. G. KARNIK **J.**
DATE: November 29, 2006

P.C.:

In view of the disposal of the appeal, this civil application does not survive and is dismissed.

(D.G. KARNIK J.)